82-1933

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM, 1983

KHAMIS KHALIL DABEIT,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

KHAMIS KHALIL DABEIT, Pro Se
4120 Hulen Place
Fort Worth, Texas 76107
(817) 732-7251

QUESTIONS PRESENTED.

1. Whether the District Court's Plea Colloquy fail to comply with and/or did not satisfy the requirement of the Federal Rules of Criminal Procedure 11, in determining the voluntariness of Appellant's plea?

2. Whether the District Court failed to admonish Appellant of the possibility of deportation as a consequence of his guilty plea violated his constitutional rights under the due process clause as an alien in the U.S.?

3. Whether Appellant in the status as an alien in the Lower Court's Colloquy proceedings falls below the requirements of the Federal Rules of Criminal Procedure, Rule 11 as mandated by Congressional and Legislative intent?

4. Finally, whether guilty pleas should constitutionally extend to include

notice to aliens who would later face the consequences of being deported from the United States prior to a Federal Court accepting a guilty plea under Rule 11 F.R.C.P.

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM, 1983

KHAMIS KHALIL DABEIT,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, KHAMIS KHALIL DABEIT, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered on

February 11, 1983. The Petitioner would also move at this time that the instant matter be literally construed as a Pro Se application in accordance with the applicable law, rules and other authorities in this jurisdiction, and on this behalf show the Court as follows:

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reproduced in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on February 11, 1983. A timely petition for Rehearing was denied on or about the 7th day of March, 1983, jurisdiction is invoked under Title 28, United States Code, Section 1254(1).

STATEMENT OF THE CASE

Petitioner, KHAMIS KHALIL DABEIT, (hereinafter referred to as the Appellant) by an indictment filed August 28, 1980, was charged, along with two Codefendants, with Conspiracy Overvaluation of a Security to a federally insured bank and Bank Robbery. On January 5, 1981, the petitioner appeared before Judge Sarah T. Hughes, and entered pleas of guilty to Counts 1, 2, 6, 10 and 11 of the Indictment previously referred to above. Appellant was sentenced, to a term of (4) years imprisonment on Count 1, two years on Count 2 to run consecutively to Count 1, two (2) years on Count 6 to run consecutively to Counts 1 and 2, two years on Count 10 to run concurrently with Count 6 and two (2) years on Count 11 to run concurrently with Count 2.

On February 10, 1981, the Petitioner/ Appellant by and through his retain counsel filed a "request for the court to extend the time for filing a Notice of Appeal upon showing of excusable neglect pursuant to Rule 4(b) F.R.A.P.", which was granted (Vol. 1, p. 37)[1] The Notice of Appeal was filed on February 10, 1981, (Vol. 1 p. 38). On March 23, 1981, the appeal was "dismissed for want of prosecution for failure of appellant's attorney appearing in his behalf to order the Court Reporter's Transcripts within the time fixed by the Rules (Vol. 1, p. 39).

On May 29, 1981, Appellant filed a Motion for Reduction of Sentence under

---

[1]All references to the Record on appeal will be made to the volume and page as designated by the clerk.

Rule 35, which was denied. The Appellant's request that the sentencing Court recommend against deportation filed Pro Se was denied on September 17, 1981. On October 22, 1981, appellant filed a Pro Se Motion to Vacate the Sentence under Title 28, United States Code, Section 2255. The District Court denied relief, and appellant appealed to the United States Court of Appeals for the Fifth Circuit alleging as grounds as will hereafter more fully appear in the instant captioned. On February 11, 1983, the United States Court of Appeals for the Fifth Circuit affirmed the decision of the District Court's judgment, and therefore appellant has timely filed the instant petition.

REASONS FOR GRANTING THE WRIT

1. WHETHER THE DISTRICT COURT'S PLEA COLLOQUY FAIL TO COMPLY WITH AND/OR DID NOT SATISFY THE REQUIREMENTS OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 11 IN DETERMINING THE VOLUNTARINESS OF APPELLANT'S PLEA?

This is an appeal from the District Court's denial of KHAMIS KHALIL DABEIT'S Motion pursuant to 28, United States Code, Section 2255, and it presents the question whether the trial Judge's failure personally to advise an accused of the nature and elements of the offense with which he was charged and not to which he pleaded guilty requires that appellant's plea be vacated, because the record reveals that the plea colloquy did not satisfy the requirements of the Federal Rules of Criminal Procedure 11, resulting in prejudice to the appellant.

FED. R. CRIM. P. 11 provides in pertinent part:

> "(C) Advice to Defendant
>
> Before accepting a plea of guilty ....the Court must address the Defendant personally in open Court and inform him of, and determine that he understands the following:"
>
> (1. The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law....

On or about January 5, 1981, the appellant and one other Codefendant appeared before Judge Hughes and entered guilty pleas to five counts of the indictment which was filed August 28, 1980. It should be noted, the trial Court conducted colloquy jointly, but simultaneous during this proceeding between

appellant and his codefendant at the time the plea was taken and accepted.

In doing so, it is the position of the appellant that the trial judge committed reversiable error and prejudice to each Defendant. (See Appellant's trial transcripts at page 60).

This Court is hereby invited to review the complete records in this case. Appellant and his codefendant were at the time of the indictment aliens in the United States. Review of the correctness of Rule 11 proceedings begin with McCarthy v. United States, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969). The Supreme Court there concluded that "a defendant is entitled to plead anew if a United States District Court accepts his guilty plea without fully adhering to the procedure provided

for Rule 11, Id. at 463-64, 89 S. Ct. at 1169.

The Court specifically stated that the Rule requires a District Judge to inquire personally into the Defendant's understanding of the charge. Id. at 467, 89 S. Ct. 1166. This Court has similarly insisted on strict compliance with Rule 11. In Woodward v. United States, 426 F. 2d 959, 962-63 (3rd Cir. 1970), it stated:

> "Routine questioning or a single response by the Defendant that he understands the (nature of the) charge is insufficient. To satisfy itself that the defendant actually does comprehend the charges, the Court must explain the meaning of the charge and what basic acts must be proved to establish guilt.... because Rule 11 requires that the

Court address the Defendant personally, questioning by the United States Attorney or representation of the Defendant by Counsel will not discharge the Court's duty to interrogate the Defendant itself." (Footnotes omitted and emphasis added).

Accordingly, Paradiso v. United States, 482 F. 2d 409 (3rd Cir. 1973); United States v. Cantor, 469 F. 2d 435 (3rd Cir. 1972); United States v. Zampitella, 416 F. Supp. 604 (E. D. Pa. 1976); Fontaine v. United States, 1973, 93 S. Ct. 1461, 411 U.S. 213, 36 L. Ed. 2d 169; Johnson v. Beto, C. A. Tex. 1972, 466 F. 2d 478; Cerniglia v. United States, D. C. Ill. 1964, 230 F. Supp. 932; United States v. Martinez, C. A. Fla. 1973, 486 F. 2d 15; Jones v. United States, C. A. Nev. 1967, 384 F. 2d 916;

United States v. ex rel, McGrath v. LaVallee, C. A. N. Y. 1965, 348 F. 2d 373, Certiorari denied 86 S. Ct. 1214, 383 U. S. 952; and Reed v. United States, C. A. Va. 1961, 291 F. 2d 856.

In view of the clear prescription of these cases that the court personally inform the defendant of the nature of the charges and the acts which would render Appellant and his Codefendant guilty.

Appellant argues that the District Court's reliance on conducting appellant's colloquy jointly with his codefendant's constitutes prejudice and error at page (60) of appellant's trial transcript and plea minutes. There it is plain that the trial judge recognized that it had made a mistake and it immediately attempted to correct the matter, but fail to do so, because of this error appellant

would respectfully request this court to reverse this matter.

Appellant do not quarrel with any conclusions drawn that additional explanation of the charge may be discretionary and may take into account the totality of circumstances. However, prior decisions of this Court precludes from permitting the District Court to abdicate to the appellant, and his attorney responsibility for minimal compliance with Rule 11.

Yet, while it must be recognized that this appeal is a Section 2255 (Collateral Attack) on the plea, rather than a direct appeal from the judgment of conviction. When appellant's Trial Counsel learned that he could not "dupe" appellant out of a $13,000 treasury check seized by the U. S. Secret Service Agents and other Law Enforcement authorities at the time of appellant's initial arrest in

Canada, coupled with the fact that appellant's attorney was acting upon the assumption that appellant would eventually be deported from the United States after parole from this sentence he received by the Court.

It is following this activity when appellant's attorney fail to order the required trial transcripts to execute a direct appeal of appellant's conviction and thereby causing the appellant to seek aid and assistance from (other) sources in an effort to litigate redress presently before this court.

Because of the error made by appellant's attorney by intentionally and knowingly abandoning appellant's appeal rights. Appellant had no other remedy available accept by the instant petition. See, Davis v. United States, 417 U.S. 333, 94 S. Ct. 2298, 41 L. Ed. 2d 109

(1974); Del Vecchio v. United States, 556 F. 2d 106 (2nd Cir., 1977); McRae v. United States, 540 F. 2d 943 (8th Cir. 1976); Bachner v. United States, 517 F. 2d 589 (7th Cir., 1975) and United States v. Hamilton, 553 F. 2d 63 (10th Cir., 1977).

Indeed, the trial court in Berry had adopted the conclusion later to be reached in Del Vecchio, it is hope that this court will refuse to accept it in this case.

> "The Court's reasoning is based on a false conception of "prejudice". Whether prejudice resulted from the entry of the guilty plea is not measured by the severity or leniency of the sentence imposed; prejudice inheres when an accused pleads guilty thus convicting himself of a

> criminal offense, without understanding the significance or "consequences" of his action."
>
> 412 F. 2d at 191

At base, the difference between our court and the Second Circuit is demonstrated by a reference to Roscoe Pound's--three-step analysis of the decisional process:

1. Choosing the controlling legal precept.
2. Interpreting the chosen precept, and
3. Applying the precept so chosen and interpreted to the case at hand.

See, Horsely v. United States, 583 F. 2d at 675(4) and R. Pound, Jurisprudence 5 (1959).

But first, in an effort to clarify what constitutes a sufficient showing of

prejudice to justify collateral relief. The court will find some guidance in the recent historical development of the law relating to acceptance of guilty pleas. Prior to McCarthy, Supra, review of a guilty Plea colloquy was governed by precisely the same precepts now applicable under Davis on collateral review--a prejudicial Rule 11 violation had to be established to justify relief.

Berry v. United States, Supra, heretofore observed, was predicated on a showing of prejudice, and was not based on the application of the McCarthy per se Rule. In Berry it may be prejudiced when a trial court fails to ascertain that he understands the nature of the charge and the consequences of the plea. There it did not look to see whether the sentence imposed exceeded the maximum Berry was led to expect; it went on

further to look and see whether he fully understood the consequences of his plea. Because he did not, his entry of a guilty plea, "convicting himself" was inherently prejudicial regardless of the sentence imposed.

Applying the Berry rationale to this case, since the record of the colloquy does disclose that appellant did not fully comprehend the nature of the charge appellant argues that this guilty plea, convicting himself of the offenses as spelled out in the sentencing and trial was inherently prejudicial. It is noted, that Rule 11 was amended in 1975, to eliminate the former requirement that the "consequences" of a guilty plea be explained to the defendant. The amendment of Rule 11(c)(1) narrows the relevant consequences, but this does not mean to derogate the extreme importance to the

defendant of knowing the range of possible consequences in cases of Aliens, especially those who would later be subject to deportation as a result of entering a guilty plea.

Finally, after the decision of McCarthy v. United States, Supra, it is believed that Davis requires or permits the court to abdicate its supervisory responsibility to the District Courts of the Fifth Circuit. Years after the decision in Woodward, Supra, where we unequivocally required the court personally to explore the inquires relevant to acceptance of a guilty plea, it stated that it believe the interest of Justice are served by tolerating or condoning failure to implement Rule 11. Strict and consistent adherence to the requirements of Rule 11 will facilitate disposition of similar Post-Conviction assertions

in the future as here of error in change of plea proceedings. Because the record will provide a clearer answer to any objections raised.

Although insistence upon adherence to the inquiry may appear to some to require compliance with an empty ritual, it nonetheless brings us one step closer to the elusive goal of assuring that there has been in fact a voluntary plea. Prior to entering this plea appellant contends that he had a valid defense to this indictment and at no time prior to accepting the advice of appellant's attorney to plea guilty was appellant informed of deportation result from the plea he was about to enter, or that deportation would later be instituted against appellant based upon his status as a citizen here in the United States.

See, Brown v. United States, 565 F. 2d 862-863-64 (3rd Cir. 1977), to the criticism that our decision exalts form over substance, we respond by repeating these words of the Supreme Court:

> "It is, therefore, not too much to require that, before sentencing defendants to years of imprisonment, District Judges take the few minutes necessary to inform them of their rights and to determine whether they understand the action they are taking."

It is for these and other reasons hereto aforementioned above that appellant prays this court remand and reverse the lower Court's opinion.

2. WHETHER THE DISTRICT COURT FAILED TO ADMONISH APPELLANT OF THE POSSIBILITY OF DEPORTATION AS A CONSEQUENCES OF HIS GUILTY PLEA UNDER

VOLUNTARINESS?

Appellant says the lower Court did not and it was error. See, Kincade v. United States, 559 F. 2d 906, 907 n. 1 (3rd Cir. 1977); United States v. Crusco, 536 F. 2d 21 (3rd Cir. 1971), and Holland v. United States, 427 F. Supp. 733 n. 11 (E.D. Pa. 1977); Henderson v. Morgan, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976) and United States v. Coronado, 554 F. 2d 166, 172 (5th Cir. 1977).

3. WHETHER APPELLANT AS AN ALIEN IN THE LOWER COURT'S COLLOQUY FALLS BELOW THE REQUIREMENTS OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 11 AS MANDATED BY CONGRESSIONAL AND LEGISLATIVE INTENT UNDER THE FOURTEENTH AMENDMENT AND DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION?

Appellant again says no, and vigorously asserts that the lower court deny him the right to be informed of the consequences of his later being deported from the United States at the time of accepting his guilty plea. The Constitution has been drafted to include aliens in the same status as any other citizen in this country. A review of my sentencing minutes will amply convey that Appellant did not understand the nature of the charges to which he plead, and therefore the plea was not made intelligently, voluntary and knowing.

See, Dimattina v. Immigration & Naturalization Service, 497 F. 2d 921 (3rd Cir.) Cert. Denied, 419 U.S. 1088, 95 S. Ct. 680 (1974); United States v. Zampitella, 416 F. Supp. 604 (1976) and Gilbert v. United States, 466 F. 2d 533 (5th Cir. 1972); United States v. Subhi

Mustafa Sadi, C.C.A.N.Y. 48 F. 2d 1040; United States v. Chandler, D.C. Md. 152 F. Supp. 169; United States v. District Director, Immigration & Naturalization Service, Mass. 87 S. Ct. 666, 385 U.S. 630, 17 L. Ed. 2d 656. Proceedings for the deportation of aliens are Civil, and not criminal, in nature, and are not governed by the rules of trials, and it is for this main reason that Aliens should be told before accepting a guilty plea that if he is found guilty in a court of law, or pleads guilty in a court of law, that an accused will be deported under the Miranda Rule, See, U.S. - Jolley v. Immigration and Naturalization Service, C.A. Ga., 441 F. 2d 586; and Lavoie v. Immigration & Naturalization Service, 418 F. 2d 732.

4. FINALLY WHETHER CONSTITUTIONALLY AS AN ALIEN THE TRIAL COURT HAD A DUTY

TO INFORM THE APPELLANT AS TO POSSIBILITY OF DEPORTATION PROCEEDINGS DURING PRETRIAL?

Rules governing deportation proceedings, in so far consistent with the law are themselves law, and binding on the Courts and Government, as well as the Aliens.

Even though a rule is fair and just in appearance, yet if it is applied and administered by the lower court's to aliens unjustly-then, it should be modified in accordance with Rule 11, Ex Parte Keizo Shibata, D. C. Cal. 30 F. 2d 942, reversed on other grounds, C.C.A. 35 F. 2d 636. In closing this argument, appellant would like to respectfully urge this court to literally construe this motion as a Pro Se litigant, and apply the existing case law and other authorities to these questions as well

as others raised herein.

CONCLUSION

FOR THE FOREGOING REASONS, the Petition for Writ of CERTIORARI should be granted and the decision of the United States Court of Appeals for the Fifth Circuit should be REVERSED.

RESPECTFULLY SUBMITTED,

KHAMIS KHALIL DABEIT, Pro Se
4120 Hulen Place
Ft. Worth, Texas 76107
(817) 732-7251

SUBSCRIBED AND SWORN to before me

Margaret E. Richard

Texas Notary Public (name)

on this 13 day of May, 1983.

My COMMISSION EXPIRES 5/23, 1984.

PROOF OF SERVICE

I, Khamis Khalil Dabeit, do hereby certify that the original plus (39) copies of the foregoing writ of Certiorari have been deposited in the U.S. Mail postage paid, to the clerk office of the United States Supreme Court, Washington, D.C. and additional (3) three copies have been deposited in the U.S. Mail to Solicitor General, Department of Justice, Washington, D.C. 20530. With accordance with rule 28 of this court on this 24th day of May, 1983.

RESPECTFULLY SUBMITTED,

Khamis K. Dabeit

KHAMIS KHALIL DABEIT,

PRO SE

4120 Hulen Place

Ft. Worth, Texas 76107

APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 82-1318

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KHAMIS KHALIL DABEIT,

Defendant-Appellant.

Appeal from the United States District Court

for the Northern District of Texas

(FEBRUARY 11, 1983)

Before CLARK, Chief Judge, and POLITZ and HIGGINBOTHAM, Circuit Judges.

POLITZ, Circuit Judge:

Khamis Khalil Dabeit, Majed Ahmad

Khamis and a colleague were indicted for conspiracy and for multiple substantive counts arising out of a checking and savings account kiting scheme. The specifics of the criminal conduct are set forth in detail in United States v. Khamis, 674 F.2d 390 (5th Cir. 1982), in which we affirmed the conviction by a jury of co-defendant Khamis. Dabeit fled to Canada but ultimately returned and pled guilty to five counts. He was sentenced to eight years imprisonment, and the court recommended deportation to Jordan upon his release.

Post conviction efforts included a motion for late appeal which was allowed but eventually dismissed for want of prosecution, a motion for reduction of sentence under Rule 35, Fed.R.Crim.P., and a request that the court recommend against deportation. Finally, Dabeit

filed the instant proceeding, invoking 28 U.S.C. § 2255 and contending that the district court failed to comply with Rule 11, Fed.R.Crim.P., in accepting his guilty plea. He also charged ineffective assistance of counsel. Adopting the magistrate's report, the district court denied the petition. We affirm.

A defendant seeking to set aside a guilty plea in a collateral attack based on a claim of inadequacy of the Rule 11 proceeding bears a considerable burden. "In the absence of a fundamental defect which inherently results in the miscarriage of justice, or an omission inconsistent with the demands of fair procedure, relief cannot be given in a collateral attack on a guilty plea conviction based on failure of Rule 11 compliance when the plea was taken." Keel v. United

States, 585 F.2d 110, 113 (5th Cir. 1978) (en banc).

A guilty plea must be voluntarily and knowingly entered. The defendant must understand the nature and consequences of the criminal conduct and the plea. Dabeit maintains that his guilty plea did not meet these requirements. The record of the Rule 11 allocution does not support his challenge.

The record reflects that the indictment was read to Dabeit who admitted the unlawful conduct. The charges were dissected into elements; each element was outlined, as were the facts establishing the various elements. Dabeit acknowledged that he understood the indictment, denied the need for further explanation, and insisted that he had no questions. The nature and maximum range of the penalty provisions of each statute

were fully explained. In addition to Debeit's personal assurances, counsel for Debeit informed the court that he had advised his client of the indictment, the right to plead innocent, the penalties, and the nature of waivers. We perceive no inadequacies.

Dabeit complains of a breach of an unwritten plea agreement between his counsel and government counsel. One asserting the existence of a previously undisclosed plea bargain bears a heavy burden. United States v. Ammirato, 670 F.2d 552 (5th Cir. 1982). That burden has not been met. We find no evidence of the purported outside plea bargain. The trial judge carefully questioned Dabeit regarding his understanding of the plea. At no time did Dabeit indicate that there was any agreement or understanding other than the one recited

in court which obliged the government to dismiss several counts.

Dabeit also insists that he should have been advised that deportation might result from the plea. The law contains no such requirement. Under Rule 11(c) the judge need only inform the defendant of "the mandatory minimum penalty...and the maximum possible penalty provided by law." An explication of other consequences, including as in this case deportation, is not mandated. United States v. Garcia, 636 F.2d 122, 123 (5th Cir. 1981).

Finally, Dabeit asserts that he was denied effective assistance of counsel. To sustain this claim, Dabeit must demonstrate that counsel did not substantially assist him in reaching his plea decision and was remiss in determining whether the plea was entered into knowingly and

voluntarily. Lamb v. Estelle, 667 F.2d 492 (5th Cir. 1982). In this case, counsel discussed with Dabeit the indictment, ramifications of a guilty plea, and waivers. Counsel informed the court that Dabeit was fully aware of the nature of the indictment and his rights with respect to the proceedings. Dabeit confirmed this by acknowledging to the court that he had a complete understanding of 11 relevant aspects of his case.

Defendant recites a number of other objections. Review of the record and relevant law reveal all of these to be meritless. Dabeit claims that he was not warned by counsel of possible deportation, though this is directly contradicted by a sworn affidavit from counsel stating that Dabeit had been told that deportation was "a separate battle" to be faced in an independent proceeding. Dabeit maintains

that he was denied access to information in his presentence report, yet throughout the proceedings leading to sentencing, both Dabeit and his counsel revealed a detailed familiarity with the information contained in the presentence report. At one point, counsel directly referred to the presentence report. Nor is there any merit in Dabeit's complaint that his counsel was ineffective because he failed to perfect an appeal. See Barrientos v. United States, 668 F.2d 838 (5th Cir. 1982).

AFFIRMED.

APPENDIX B.

United States Court of Appeals

Fifth Circuit

Office of the Clerk

February 11, 1983

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

No. 82-1318 - UNITED STATES OF AMERICA -vs- KHAMIS KHALIL DABEIT

Enclosed is a copy of the Court's decision this day rendered in the above case. A judgment has this day been entered in accordance therewith pursuant to Rule 36 of the Federal Rules of Appellate Procedure.

Rules 39, 40 and 41, F.R.A.P. and Local Rules 22, 16 and 17 govern costs, petitions for rehearing and mandates respectively.

A petition for rehearing must be filed in the Clerk's Office within 14 days

from this date. Placing the petition in the mail on the 14th day will not suffice. Local Rule 17 provides that "A motion for a stay of the issuance of a mandate in a direct criminal appeal filed under F.R.A.P. Rule 41 shall not be granted simply upon request. Unless the petition sets forth good cause for stay or clearly demonstrates that a substantial question is to be presented to the Supreme Court, the motion shall be denied and the mandate thereafter issued forthwith".

If you are court-appointed counsel, this Court's plan under the Criminal Justice Act provides that in the event of affirmance or other decision adverse to the party represented, appointed counsel shall promptly advise the party in writing of the right to seek further review by the filing of a petition for writ of certiorari with the Supreme Court and

shall file such petition if requested to do so in writing by such party. Vouchers claiming compensation and reimbursement of expenses should be filed as promptly as possible and in no event later than 60 days after representation is completed.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By /s/ Sarah L. Holmes

Deputy Clerk

Encl.

cc: Mr. Khamis Khalil Dabeit

Ms. Cheryl B. Wattley

APPENDIX C.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 82-1318

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KHAMIS KHALIL DABEIT,

Defendant-Appellant.

Appeal from the United States

District Court for the

Northern District of Texas

ON SUGGESTION FOR REHEARING EN BANC

(Opinion Feb. 11, 1983, 5 Cir.,

198_, _____F.2d___).

(March 7, 1983)

Before CLARK, Chief Judge, POLITZ and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:

(/x/) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the suggestion for Rehearing En Banc is DENIED.

( ) Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having

voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Henry A. Politz

United States Circuit Judge

APPENDIX D.

United States Court of Appeals

Fifth Circuit

Office of the Clerk

March 24, 1983

Ms. Nancy S. Hall, Clerk

United States District Court

1100 Commerce Street, Room 15022

Dallas, TX 75242

No. 82-1318 U.S.A. -vs- Khamis Khalil Dabeit

(D.C. Docket No. CR-3-80-193-B)

___ Enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

___ Enclosed to you only is a certified copy of the Rule 21 Decision in the above case issued as and for the mandate.

__X__ The Court having denied the motion for stay of mandate, enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

___ Having received from the Clerk of the Supreme Court a copy of the order of that Court denying certiorari, I enclose a certified copy of the judgment of this Court in the above case, issued as and for the mandate.

___ We have received a certified copy of an order of the Supreme Court denying certiorari in the above cause. This Court's judgment as mandate having already been issued to your office, no further order will be forthcoming. Enclosed herewith are the following additional documents:

__X__ Copy of the Court's opinion.

__X__ Original record on appeal or review.

(4 Volumes)

___ Original exhibits.

___ Bill of Costs approved by this Court.

___ Copy enclosed to counsel.

Sincerely,

GILBERT F. GANUCHEAU,

Clerk

By: /s/ Kim H. Armato

Deputy Clerk

cc: (Letter Only)

Mr. Khamis Khalil Dabeit

Ms. Cheryl B. Wattley

APPENDIX E.

United States Court of Appeals

Fifth Circuit

Office of the Clerk

March 15, 1983

Mr. Khamis Khalil Dabeit

4120 Hulen Place

Fort Worth, TX 76107

No. 82-1318 - USA vs. Dabeit

In regards to the case identified above, the following motion has been filed:

APPELLANT'S MOTION FOR ENLARGEMENT OF TIME FOR STAY OF MANDATE PENDING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT.

This motion will be presented for ruling without oral argument on this date:

MARCH 22, 1983.

Any response to the motion must be filed by opposing counsel on or before that

date to be considered in the ruling.

___ Please forward a certificate of interested persons as required by Local Rule 10.5 within the foregoing time period.

The date shown above indicates when the matter will be forwarded for ruling and does not mean that any action will be completed by then. Counsel should allow at least ten (10) days thereafter before inquiring about the Court's ruling.

Very truly yours,

GILBERT F. GANUCHEAU,

Clerk

By: /s/ Betty G. Martinez

Deputy Clerk

cc: Ms. Cheryl B. Wattley

APPENDIX F.

United States Court of Appeals

Fifth Circuit

Office of the Clerk

March 15, 1983

Mr. Khamis Khalil Dabeit

4120 Hulen Place

Fort Worth, TX 76107

No. 82-1318 - USA -vs- Dabeit

Dear Mr. Dabeit:

Enclosed is a copy of your notice of appeal to the Supreme Court of the United States, received and filed in this office on this date. This document should be attached as an appendix to your jurisdictional statement to be filed with the Clerk of the Supreme Court pursuant to that Court's Rule 15.1(j)(iv).

Also, under revised Rule 19.1 of the Supreme Court effective June 30, 1981, a

record is no longer required in connection with an application for writ of certiorari and, therefore will not be routinely prepared by this office. However, in the event this office is notified by the Supreme Court that the petition for writ of certiorari has been granted, the records will be certified to the Supreme Court.

Very truly yours,

GILBERT F. GANUCHEAU,

Clerk

By /s/ Susan Vaughn

Susan Vaughn

Case Manager

SV/dj

cc: Ms. Cheryl B. Wattley

Mr. Alexander Stevas

APPENDIX G.

IN THE UNITED STATES
COURT OF APPEALS FOR
THE FIFTH CIRCUIT

KHAMIS KHALIL DABEIT, x

Appellant

v. 82-1318

UNITED STATES OF AMERICA,

Appellee

x

NOTICE OF APPEAL

Pursuant to Title 28, United States Code, Section 2101(C), KHAMIS KHALIL DABEIT, the above named hereby appeals from the decision entered by the United States Court of Appeals for the Fifth Circuit to the Supreme Court of the United States.

Judgment was entered by the Fifth Circuit on Feb. 11, 1983, Affirming the conviction.

Respectfully Submitted,

/s/ Khamis K. Dabeit

KHAMIS KHALIL DABEIT,

Pro Se

4120 Hulen Place

Ft. Worth, Texas 76107

Date:

Executed in Tarrant County Texas

APPENDIX H.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 82-1318

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KHAMIS KHALIL DABEIT,

Defendant-Appellant.

Appeal from the United States

District Court for the

Northern District of Texas

Before GEE, RANDALL and TATE, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the appellant's motion for stay of execution of commencement

of any deportation proceeding and temporary restraining order pending appeal is GRANTED pending further order of this Court.

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